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Attorney for Petitioner Greycliff Wind Prime, LLC

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER of the Petition of
Greycliff Wind Prime, LLC To Set Terms
and Conditions for Qualifying Small Power
Production Facility Pursuant to M.C.A. §
69-3-603

UTILITY DIVISION
DOCKET NO. D2015.8.64

**MOTION FOR PROTECTIVE ORDER AND BRIEF IN SUPPORT OF GREYCLIFF WIND
PRIME, LLC**

Pursuant to ARM 38.2.5001 through 38.2.5030, Greycliff Wind Prime, LLC ("Greycliff") acting through undersigned counsel, herby submits this Motion for Protective Order ("Motion") respectfully requesting that the Montana Public Service Commission "Commission") enter a protective order covering its Confidential Information (defined below). In support of this Motion, Movant submits the affidavit of Mr. Patrick Pelstring ("Affidavit"). Mr. Pelstring is President and Chief Executive Officer for National Renewable Solutions, LLC, one of the owners of the Greycliff project. Greycliff has attached the Affidavit to this Motion as Exhibit A.

1. Introduction and Factual Overview

On November 18, 2011, the Commission and NorthWestern Energy ("NWE") submitted

data requests to Greycliff. Certain of the data requests submitted by the Commission and NWE will result in Greycliff being required to produce information that is properly trade secret information by October 16, 2015. Greycliff is submitting the bulk of the responses to the data requests without protection, but certain items identified herein must be protected as it is proprietary information which a competitor could derive economic value or gain an economic advantage in competing with Greycliff.

2. Contact Information

Commission staff, parties, and interested persons may direct communications regarding this Motion to the undersigned counsel:

Michael J. Uda
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3. Identification, description, and explanation of the Information

Generally, Greycliff requests protection of its non-public financial information which would otherwise be required to be produced in response to data requests submitted by the Commission and NWE which generally contain, describe, identify, or reflect this information ("Confidential Information"). The Confidential Information includes information, whether written, oral or other tangible or intangible forms, which may include, but is not limited to, ideas, concepts, know-how, models, diagrams, flow charts, data, computer programs, marketing plans, business plans, customer information, and other technical, financial or business information, designated as "Confidential Information" by a producing party if the party believes in good faith that the material is confidential or proprietary and is entitled to protection from disclosure under any provision of

Montana state law or Federal law and the material is furnished or otherwise made available pursuant to discovery requests or otherwise produced during the Proceeding, as that term is defined below. "Confidential Information" shall not include information contained in the public files of any federal or state agency that is subject to disclosure under relevant statutes nor shall it include information that, at the time it is provided through discovery or otherwise during the Proceeding or prior thereto, is or was public or that becomes public other than through disclosure in violation of this Order. Nor shall "Confidential Information" include information found by this Commission, or a court of competent jurisdiction, not to merit the protection afforded Confidential Information under the terms of this Order.

4. Factual and legal basis supporting the claim of confidentiality

There is ample legal authority for the request by Greycliff. On the motion of a business entity providing information to the Commission for the latter to execute its mission, the Commission "may issue a protective order when necessary to preserve trade secrets, as defined in Mont. Code Ann. § 30-14-402, or other information that must be protected under law." Mont. Code Ann. § 69-3-105(2). As defined in Mont. Code Ann. § 30-14-402(4), "trade secret" means information or computer software, including a formula, pattern, compilation, program, device, method, technique, or process, that:

- derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and
- is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The information sought to be protected through this motion meets this statutory definition. The Montana Supreme Court's decision in *Great Falls Tribune v. Montana Public Service Comm.*

319 Mont. 38, 50, 82 P.3d 876, 883 (2003) further confirms the need to protect from public disclosure the information for which Greycliff seeks confidential treatment:

[N]othing in Article II, Section 9 requires disclosure of trade secrets and other confidential proprietary information where the data is protected from disclosure elsewhere in the federal or state constitutions or by statute. For example, a non-human corporate entity may enjoy confidentiality of its property interests under Montana statutory law, such as the Uniform Trade Secrets Act, Title 30, Chapter 14, Part 4, or protection against the "taking" of private property for public use without just compensation under the federal and state constitutions. Such cases implicate the due process and equal protection clauses of the state and federal constitutions and from the legal grounds through which non-human entities can seek protection of confidential information.

Pursuant to the requirements of ARM §38.2.5007(3) (c), Greycliff has submitted the Affidavit of Mr. Patrick Pelstring in support of this Motion. Affiant is a person sufficiently familiar with the scope of the information for which Greycliff seeks protection, and the Affidavit supports the claim regarding the confidentiality of the information.

ARM 38.2.5007(4) (b) requires a party seeking protection of confidential information to make the following demonstration:

1. That it has duly considered that the Commission is a public agency and that there is a constitutional presumption of public access to documents and information in the Commission's possession;
2. the claimed trade secret material is information;
3. the information is secret;
4. the secret information is subject to efforts reasonable under the circumstances to maintain its secrecy;
5. the secret information is not readily ascertainable by proper means; and,

6. the information derives independent economic value from its secrecy, or competitive advantage is derived from its secrecy.

As is demonstrated by the testimony of Affiant and in the remainder of this motion, Greycliff has met this burden as is shown below and in the testimony of Affiant.

a. Consideration that the Commission is a public agency

Greycliff has considered that the Commission is a public agency and that there is a Constitutional presumption of public access to documents and information in the Commission's possession. Greycliff further recognizes that it has the burden of demonstrating the Information is confidential information and that it must establish a factual and legal prima facie showing of confidentiality. Greycliff has completed the requisite legal and factual examination and has concluded the Information is properly considered confidential trade secret information.

b. The Confidential Information is "information" and is secret

The Confidential Information consists of data, facts, and opinions regarding Greycliff's business practices, finances, data regarding generation expected from its facility, capacity factor calculations, and other business information, whether written, oral or other tangible or intangible forms, which may include, but is not limited to, ideas, concepts, know-how, models, diagrams, flow charts, data, computer programs, marketing plans, business plans, customer information, and other technical, financial or business information related to Greycliff which has independent economic value to Greycliff's competitors and could damage Greycliff financially if released to the public. Greycliff submits that, as demonstrated below and in the Affidavit, that Greycliff makes every effort to preserve the secrecy of the information. Greycliff, through this motion and its accompanying Affidavit, also detail the efforts it has made to protect the information for which it seeks protection here from public disclosure. Also, Greycliff will demonstrate the efforts it

has made in other proceedings to protect this type of information from public disclosure, and that this information is, in fact, not generally available to the public and is properly secret “trade secret”-like information.

c. The Confidential Information is subject to efforts reasonable under the circumstances to maintain its secrecy and is not readily ascertainable by proper means

As explained in the Affidavit, Greycliff takes a number of steps to maintain the secrecy of the Confidential Information. First, Greycliff has a limited number of people that have the ability to even authorize the release of the Confidential Information. Second, Greycliff shreds hard copies of the Information, has an established in-house protocol for releasing the information, and by routinely files motions for protective orders in proceedings in which the Information is necessarily part of the proceeding. Greycliff therefore believes that it has and does make efforts reasonable under the circumstances to maintain the secrecy of the Confidential Information. Further, given these steps the Information is not readily ascertainable through proper channels.

d. The Confidential Information derives independent economic value from its secrecy

Greycliff derives both independent economic value and competitive advantage from the secrecy of the Confidential Information. The wind development business is highly competitive and the pursuit of power purchase agreements, the due diligence required to locate and secure relatively good locations for wind power generation, and the manner and pricing of its agreements and the economic analysis accompanying those agreements, is a difficult, expensive and time consuming process. How Greycliff develops its projects, how it selects sites, its wind data, power curve analyses, capacity factors, and related matters, is a highly commercially sensitive process. Other wind developers could obtain a competitive advantage by learning the methods, processes, analyses, and other data which drives the valuation and pricing of these services. Further, by

maintaining the secrecy of Greycliff's business practices, it also maintains its competitive edge. Without this secrecy, Greycliff's wind development practices, its business model and its economic viability may be affected. Greycliff believes it has a unique competitive advantage over other wind developers; this advantage may be negatively affected by public disclosure of the Information

5. Conclusion

For the foregoing reasons, Greycliff respectfully moves the Commission for a protective order to protect the Confidential Information.

Respectfully submitted this 20th day of October, 2015

UDA LAW FIRM, P.C.

By: _____

Michael J. Uda
Attorney for Greycliff Wind Prime, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this, the 20th day of October, 2015, the foregoing MOTION FOR PROTECTIVE ORDER AND BRIEF IN SUPPORT was served via electronic mail and U.S. mail unless otherwise indicated to the following:

Kate Whitney
Montana Public Service Commission
1701 Prospect Avenue
P.O. Box 202601
Helena, MT 59620-2601

John Alke
Northwestern Energy
208 N. Montana Ave
Suite 205
Helena, MT 59601

Sarah Norcott
Northwestern Energy
208 N. Montana Ave
Suite 205
Helena, MT 59601

Pam LeProwse
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Butte, MT 59701

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UTILITY DIVISION

DOCKET NO. D2015.8.64

**AFFIDAVT OF PATRICK PELTSRING IN SUPPORT OF GREYCLIFF WIND PRIME,
LLC'S MOTION FOR PROTECTIVE ORDER AND BRIEF IN SUPPORT**

STATE OF MINNESOTA)
 : SS.
County of Hennepin)

I, Pat Pelstring, being first duly sworn upon oath, deposes and states as follows:

1. I am President and Chief Executive Office of National Renewable Solutions, LLC, which is one of the owners of the Greycliff Wind Prime, LLC wind project ("Greycliff") which is the subject matter of the above-captioned proceeding before the Montana Public Service Commission ("Commission").

2. I am providing this affidavit in connection with a motion for protective order being filed with the Commission in connection with Docket No D2015.8.64, In the Matter of the

Petition of Greycliff Wind Prime, LLC To Set Terms and Conditions for Qualifying Small Power Production Facility Pursuant to M.C.A. § 69-3-603.

3. I have knowledge of the day-to-day operations of Greycliff with respect to the need for submitting certain information in this proceeding, as well as Greycliff's practices with respect to protecting the confidentiality of trade secret and confidential information that has commercial value to our competitors.

4. Greycliff is authorized to do business in Montana.

5. Greycliff is a wind project located in Sweet Grass County, Montana.

6. I have been in the wind development business for ___ years, and have dealt with the need to protect commercially sensitive information from competitors in the wind development industry.

7. The wind development business is highly competitive. Each developer attempts to protect the data associated with each of its potential and actual wind development sites, particularly information such as wind data derived from meteorological towers, the analysis of such data (including but not limited to power curve analyses), and ultimately potential capacity factors associated with the site, the meteorological data, and power curve analyses. This data may ultimately determine whether a project is able to be financially successful.

8. The submittal of Greycliff's wind data, potential analyses of such data by such competitors, the ability to derive power curves and capacity factors, must be protected against disclosure. If a competitor is able to access this sort of data, it can successfully replicate the method, manner, and outcomes generated by Greycliff's proprietary approach to this data, and potentially replicate the results and obtain commercial information.

9. All of the Confidential Information that will be submitted was in the nature of

data, facts, or opinions or was of a like nature.

10. All of the Confidential Information that Greycliff may provide pursuant to this proceeding is carefully maintained at Greycliff's offices and is not available to the public or anyone outside of Greycliff's office.

11. Greycliff's primary office where these files are normally maintained is located in 328 Barry Avenue South, Suite 100, Wayzata, MN 55391.

12. Greycliff maintains strict security at all times at its offices over the Confidential Information, including the following measures: Only members of Greycliff and their respective employees are allowed access to this information, and all such information provided to outside consultants, experts, attorneys or any other non-employees is produced pursuant to confidentiality agreements with penalties for violations of confidentiality if such information is disclosed without the express, advance, written permission of Greycliff. All present and past Confidential Information is strictly maintained in separate file cabinets which are clearly marked as "Confidential."

13. Greycliff has a document destruction protocol which dictates that Confidential Information beyond a certain vintage must be shredded and disposed of by authorized personnel.

14. Electronic copies of information of the kind and type of the Confidential Information are accessible to only members of Greycliff and their respective employees.

15. Greycliff's policy is to release information of the kind and type of the Confidential Information only upon the approval of myself and upon agreement with the other members of Greycliff, and only after confirming confidentiality arrangements.

16. The steps described above are taken in order to protect information that has independent economic value and that provides a competitive advantage.

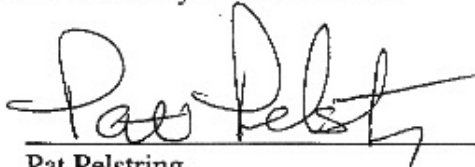
17. We have expended considerable time and expense in assembling and arranging for the Confidential Information.

18. Further, the Confidential Information represents a set of assets/tools we employ in connection with our various projects. By maintaining the secrecy of these assets, our competitors are prevented from accessing some of the basic elements of our projects, such as those elements that relate to our capacity, our cost of capital, and our ability to finance.

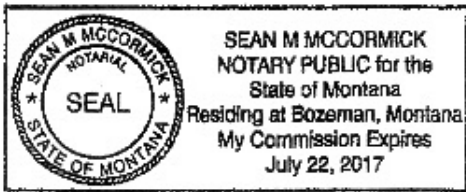
19. Greycliff supports the use of the Confidential Information by the Commission in trying to resolve this docket. However, Greycliff respectfully requests that the Commission adopt the protective order covering the Confidential Information.

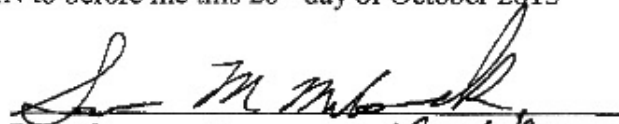
[SIGNATURE PAGE FOLLOWS]

DATED this 20th day of October 2015


Pat Pelstring

SUBSCRIBED AND SWORN to before me this 20th day of October 2015




Printed name: Sean M McCormick
Notary Public for the State of Montana
Residing at: Bozeman, MT
My commission expires: July 22, 2017